

ITEM: 25

SUBJECT: Draft NPDES General Permit/WDRs for Existing CAFOs (Milk Cow Dairies) - *Status Report*

BOARD ACTION: *No action required by the Board: Status report since release of 28 September 2004 Draft NPDES General Permit/WDR for Existing CAFOs (Milk Cow Dairies)*

BACKGROUND: On 28 September 2004, staff released an administrative draft NPDES General permit/WDRs for Existing CAFOs (Milk Cow Dairies) (draft General Order). The draft General Order was intended to implement the CAFO Rule promulgated by the U. S. EPA in February 2003. The draft General Order was the subject of the Board's 3 December workshop.

Because of the extensive written and oral comments, the Board directed staff to meet with the various stakeholders and, if needed, hold an additional workshop to identify options that may resolve the remaining major issues. Staff has held initial meetings with representatives of the dairy industry and environmental groups to clarify their comments and to discuss possible options to resolve the major issues.

On 28 February 2005, the United States Court of Appeals for the Second Circuit released a decision on a petition by environmental and farmer groups on the CAFO Rule. The decision resulted in the Court vacating the provisions of the CAFO Rule that (1) allow permitting authorities to issue permits without reviewing the terms of the nutrient management plan; (2) allow permitting authorities to issue permits that do not include the terms of nutrient management plans and that do not provide for adequate public participation; and (3) require CAFOs to apply for NPDES permits or otherwise demonstrate that they have no potential to discharge.

As of the agenda preparation, U. S. EPA has not developed a response to the Court decision and therefore has not been able to provide guidance on how to proceed with the draft General Order.

ISSUES: Staff will provide the Board with an update on the current status of the draft General Order.

Mgmt. Review \_\_\_\_\_  
Legal Review \_\_\_\_\_